

## Justifications for “Pier Contract”

### **Contract Itself:**

In this current age, has anyone signed up for a service without having the terms of service presented and agreeing to the terms of service? There are new rules and regulations for the off-shore piers, their placement, their liability and their maintenance. The off-shore need to be made aware of, and agree to, these rules and regulations. The off-shore representatives do not want to publish these rules and regulations because they do not want them enforced and do not want the off-shore to be aware of the rules and regulations. The proposed contract was heavily influenced by the Syracuse Ordinance no. 2013-3 which is attached.

It is our mandate to publish the rules and regulations.

Bylaws Article IV Section 5 (a): To adopt and publish reasonable rules and regulations governing the use and enjoyment of the easement, the management and administration of the Committee and as otherwise permitted in the 1994 Judgment and the 2014 Order, and to establish sanctions for the infraction thereof, in each case in a manner consistent with the 1994 Judgment and the 2014 Order.

March 20, 2014 Court Order 34 (h): Order the Epworth Forest Administration Committee to create By-Laws, rules and regulations...

How can we hold off-shore accountable if they do not know and agree to the policies?

Articles of Incorporation Section 2.03 (E) To levy reasonable fines for violation of policies and pier assignments...

### **Application Guidelines:**

#### **1 (a) The owner/person shall be a resident of Epworth Forest.**

Articles of Incorporation Article X Section 10.01 (N) “Owner” means either an Off-shore owner, On-shore owner or the Conference as owners of Parcels within the plat of Epworth Forest on Lake Webster in Kosciusko County, Indiana. (Q) “Person” means an individual, firm, corporation, partnership, association, joint venture, trust or other legal entity, or any combination thereof.

#### **1 (b) The owner/person shall maintain personal liability insurance on the placement in the amount not less than \$500,000. The owner/person/guests shall indemnify the EFAC and the On-shore Property Owners, whose land is used for access to the placement, for any loss resulting from the access to the pier, use of the pier, attachments or watercraft.**

Bylaws Article IV Section 5 (f): To verify each Off-shore owner who requests a pier has adequate liability insurance in such reasonable amounts as determined in the sole discretion of the Board of Directors.

Minutes of 8/23/14 show the amount of \$500,000 was voted and agreed by the Board. The On-shore members wanted \$1,000,000 or an amount equal to the On-shore property owner's insurance. The Off-shore wanted \$300,000. We agreed to \$500,000.

The Board has no liability; neither should the On-shore Property owners:

Bylaws Article VIII Section 1: ...Except as provided in these Bylaws, no officer, agent, or employee shall have any power to bind the Committee or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

Articles of Incorporation Article VIII Section 8.06: Non-Liability: No Member or Director of the Corporation shall be liable for any of the Corporation's obligations.

The Off-shore owners would make no decisions or take any votes prior to obtaining liability insurance. They are certainly aware of liability issues. They want to protect themselves, why not the On-shore property owners and the EFAC?

The Easement has no defined location. In the 1994 Judgment (Judgement (1)), the property owners own to the water's edge. Any person walking along the shore is both on the easement (wherever that is located) and on the private property of the property owner. The property owner is not being compensated for this easement (they are in fact being charged both by EFAC and by property tax and assessment), they have not given permission for the person(s) to be on their property. Why should they be liable? If an accident or injury occurs, the person(s) injured do not even have to sue the property owner, the health insurance of the injured will pursue action against the property owner. The injured has no say in the matter. Neither does the property owner. Since the Easement location cannot be proved, it will always go against the property owner.

Even if the Liability Insurance of the injured was considered, I am sure in the vast majority of the cases, the Property Owner has a higher liability policy than the \$500,000 required of the Off-shore. The higher policy will be the one pursued.

The actions of the Off-shore are their responsibility. The pier, use of the pier, attachments and watercraft are the Off-shore property and their responsibility, not the On-shore property owner's property or responsibility. The On-shore has no control and should have no liability.

The testimony before the judge was concerning this assumed liability of the On-shore property owner. The Judge attempted to address the issue by requiring the Off-shore to have Liability insurance. But, without the release of liability statement in a contract signed by the Off-shore, it will all end up in court with the Property Owner and EFAC being the liable parties.

Articles of Incorporation Article II Section 2.03 (K): To ensure off-shore owners are required to access their pier locations over rights of way.

The Off-shore must use a lake access easement to access the Easement. They are not allowed to cross the property owner's property going to the lake. This means that they may need to cross

multiple On-shore properties via the Easement in order to arrive at their assigned pier location. Those property owners need to be protected just as does the property owner that is actually hosting the pier assignment.

A release of liability is the rule, not the exception in today's world. The On-shore and EFAC should not be the exception and should be protected.

**1 (c) Owner/person shall pay the annual fees for the assignment.**

Certainly hope this is obvious. If not:

Articles of Incorporation Article II Section 2.03 (L): To fix, levy, collect, and enforce payment of all charges or Assessments.....

**1 (d) There shall be no sub-leasing of pier space to another owner/person.**

Assignments are only for Epworth Forest Owners. The Off-shore owners are allowed one pier and one boat. To allow sub-leasing would negate those requirements.

Jan 21, 2014 Order Orders 6: The Court's Judgment provides that the off-shore owners have a littoral use to erect a pier and to dock a boat. The regulations must be so modified to conform to this limitation and allow for the placement of only one pier and the docking of only one boat or other watercraft for each off-shore owner.

**2) EFAC shall have the authority to control the use and maintenance of piers after placement. EFAC shall give written/e-mail notice of any violation to the owner/person. In the event the owner/person fails to satisfy the requirement contained therein, the EFAC shall have the right to order the owner/person to remove all property from the location; if the owner/person fails to remove such property, the EFAC shall have the authority to remove all such property and seek the costs for such action from the owner/person.**

Authority given in many locations across all the documents.

**Pier Guidelines**

**a) The placement shall be subject to the Indiana Code, Regulations and rules of the DNR.**

Should be obvious that the law should be followed, but specifically stated:

Bylaws Article XI Section 4

Articles of Incorporation Article II Section 2.03 (M) (N) (P) (Q)

Pier Administration Policy Rules and Regulations Paragraph 1

**b) Each pier section shall conform to the prior pier section.**

Piers are being placed in front of On-shore property. On-shore owners should not have to endure improperly maintained piers or piers that are not of consistent construction.

**c) Each pier section shall be maintained in good maintenance and repair.**

Piers are being placed in front of On-shore property. On-shore owners should not have to endure improperly maintained piers or piers that are not of consistent construction. Liability issue.

**d) One boat or other watercraft per assignment.**

Jan 21, 2014 Order Orders 6: The Court's Judgment provides that the off-shore owners have a littoral use to erect a pier and to dock a boat. The regulations must be so modified to conform to this limitation and allow for the placement of only one pier and the docking of only one boat or other watercraft for each off-shore owner.

**e) Each pier and any attachments or watercraft shall not be installed prior to April 1 and be removed prior to November 1 of each year.**

Pier Administration Policy 6: Shoreline piers shall be labeled by each owner with the pier location number and may be maintained in the water during normal periods that shoreline piers are in the water in Lake Webster; however, shoreline piers shall be removed from the water prior to freezing.

**f) Community pier assignees are responsible for all damage to their dock area and damage they cause to other dock areas.**

It cost EFAC and the current/future community pier assignees about \$2200 to repair the community piers. Much of the damage was due to individual assignees not properly tying their boat and not having the appropriate boat bumpers. The assignee should bear the cost of repairing the damage, not the EFAC and other assignees.

**g) Piers placed on the shoreline shall be limited to 16 feet of lift, boat and pier. Shared piers (two assignments on the same pier) shall be limited to 28 feet of lift, boat and pier.**

Pier Administration Policy 2. Also, concept of shared pier (one pier with an off-shore assignment on both right and left of the pier) was discussed and agreed upon at meetings. Shared piers concept was presented in detail at the annual meeting. Concept is where two off-shore piers are side by side, to eliminate one pier and park the boats on both sides. This saves 14 feet which will allow both assignments to stay in the same location and maintain the 10 foot separation. It will also allow a second boat in some areas where there is only one pier and boat but another boat can be added and still maintain the 10 feet separation.

**h) Provide for a five (5) foot clearance on both sides ((for a total of 10 feet) of the dividing line between pier sites.**

Jan 21, 2014 Court Order Order 8 (a): Allow/provide for a five (5) foot clearance on both sides (for a total of ten (10) feet) of the dividing line between pier sites so that a ten (10) foot buffer zone may exist between all facilities and equipment utilized on the pier sites.

Indiana Natural Resources Commission Annotated Navigable Waters Rules 312 IAC 6-4-4 1 (B): 1. Provide a reasonable buffer zone between the pier and the following: B. The riparian zone of adjacent property owners to provide for reasonable navigation by the adjacent property owner and by the public. Except as otherwise provided in this clause, the department shall require at least (5) feet of clearance on both sides of a riparian line (for a total of ten (10) feet). The department may require as much as ten (10) feet of clearance on both sides of a riparian line (for a total of twenty (20) feet) if, based upon the opinion of a qualified professional, that additional clearance is required for reasonable navigation. The department may approve an exception to this clause where:

- i. Adjacent riparian owners use a common pier along their mutual property line; and
- ii) the purposes of this clause are satisfied by waters elsewhere within their riparian zones.

Currently, the piers are too close causing a very unsafe condition. Swimmers cannot get from shore to the lake. They cannot bring water toys (tubes, floats, skis, wakeboards) to shore or to a boat that is on the lake. Boats are typically nine (9) feet or less. A disabled boat must be able to get to shore. Less than 9 feet will not allow this to occur, causing damage to the disabled boat and possibly numerous piers and boats where they are tightly congested. Swimmers must be able to get to shore. Currently there are many assignments that have no space between them. A duck cannot get to shore, let alone a panic stricken swimmer. Does the EFAC want to ignore the court order and the NRC Rules? If so, we are assuming the liability for damages and injuries/deaths.

Using shard piers saves us 14 feet when there are adjacent off-shore assignments. Additionally, it just spoils the view of the lake when there is no lake to be viewed!!

#### **h) Loss of pier assignment location upon verified complaint of property owner.**

Some people can just not get along. Where there is a documented and verified problem between the on-shore property owner and the off-shore owner, the off-shore owner needs to be reassigned and a different off-shore placement assigned to the property owner. Rather than enumerate the reasons (child molester, criminal, drunken behavior, unsafe boat operation, late hour activity, high noise level, inappropriate behavior for minors, etc), the EFAC needs to use reasonable judgment and not subject the on-shore owner to unreasonable “guests”.

#### **Asking for the boat Information:**

We need to know what boat is to be at the pier. There is no sub-leasing for pier assignments and the community pier are all assigned slots that are not to be used by persons not leasing the space. We must have the boat information.

Also, a pier assignment must have a boat.

Jan 21, 2014 Order Orders 6: The Court’s Judgment provides that the off-shore owners have a littoral use to erect a pier and to dock a boat. The regulations must be so modified to conform to this limitation and allow for the placement of only one pier **and** the docking of only one boat or other watercraft for each off-shore owner.

Aug 2, 1994 Order Page 12 4<sup>th</sup> paragraph: ...the off-shore owners have littoral use to erect a pier **and** to dock a boat...

Jan 21, 2014 Order Findings 3 (5) ...the off-shore owners have littoral use to erect a pier **and** to dock a boat...

Two years ago in July, on a weekend, when it was raining (ie all boats were docked except me) there were twenty six (26) piers in the Epworth forest area with no boats. The majority of these (if not all) were off-shore piers. The past thought of the off-shore owners were once an assignment was received; keep it forever, even if not being used. Several of these “piers” were three feet long. They did not even reach the water. Many were in complete disrepair and would be dangerous to even walk on.

The Orders above clearly state “one pier **and** the docking of only **one boat**” or “**a boat**”. The key is “pier and ...boat” . The “and” implies both pier and boat. The singular “boat” is one boat.

We have 40 on the wait list. If we can use the 26 non-compliant pier assignments, this goes a long way towards addressing the need.

### **Pier Transfer:**

Another issue having to do with pier assignments is the transfer document. In the past, an off-shore property that was bought by a new owner would use the transfer document to transfer the prior owner’s pier assignment to the new owner.

I do not believe this is contrary to the court orders:

Jan 21, 2014 Order Order 7 (c): Requests for pier sites and/or pier slips should be assigned in the order they are received by the Conference.

Pier Administration Policy 9: ...New pier locations are assigned on a first-come first served basis and are not guaranteed. ...Pier assignments are not deeded with the property nor are all non-lakefront property owners guaranteed a pier placement.

Pier assignments are to the owner/person living in Epworth Forest, not to deeded to the property. Assignments should be given in the order of receipt. Pier Transfer Document (on web site) was put together in the past by those that had piers. They were looking out for their own interests. What about those that want a pier? The number of piers assignments is static (unless we correct the empty pier situation and build additional community piers). A property owner that does not have an assignment can NEVER get one. A new owner, that happens to buy a property where the previous owner had a pier, gets one immediately. THIS IS NOT FAIR!!

Both sides (new off-shore and existing off-shore) will argue property values. Both are true. If you own a property with a pier it is more valuable if the pier goes with the property (but it does

not). If you own a property without a pier, but you can get one in a reasonable time frame, the property is more valuable. If someone wants a guarantee of a pier on the lake, they need to buy lake-front!! Otherwise, assignments should be as ordered by the court, "assigned in order they are received".

### **Proposed tiered funding for annual assessment of piers**

The 1994 Judgment said "If in the administration of such regulations costs which the Conference cannot reasonably bear are incurred, that cost may be budgeted and PROPORTIONATELY (caps added) charged upon all persons...".

According to the Kosciusko County Assessor, the on-shore is presently assessed \$2950.00 a foot for their lakefront whereas off-shore is assessed \$350 a foot for their land. At the present 16 foot allotment plus 2 foot on each side for an offshore pier for a total of 20 feet on the on-shore land, the onshore is losing \$59,000 in assessment a year. In addition to the taxes on-shore pay, add to this the amount of money on-shore pays for extra liability and property insurance, seawalls, and maintenance. None of which the off-shore assist in paying. On-shore owners are losing a large investment annually because off-shore piers are on their land. An area on-shore cannot use as long as off-shore piers are there. How is this considered proportional to \$100 the offshore may have to pay?

In addition, if there were no off-shore piers on on-shore property, there would be no need for a Board and money to accumulate to operate. The off-shore cannot accept they are an equivalent to being a tenant, not an owner. So why do off-shore always feel on-shore should "share" more, give more, and they should take more.

Let the off-shore carry most of the burden. The on-shore should pay \$25-\$50.